IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH NAGPUR
Second Appeal No.90/2003

Office Notes, Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. : Court's or Judge's orders

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CORAM : A.P. Lavande, J.
Dated : November 9 , 2006

Heard Mr. Abhay Sambre, Advocate for the appellants and Mr. S.U. Nemade, Advocate for respondent nos. 1 to 3. None present on behalf of the legal representatives of respondent nos.4,5, 6 and respondent nos. 7, 8 and 9.

By this appeal, the appellants take exception to the judgment dated 28.1.2003 passed by 1st Adhoc Additional District Judge, Pusad in Regular Civil Appeal No.36/1998 dismissing the appeal filed by the appellants against judgment and decree dated 31.3.1998 passed by Civil Judge Junior Division, Digras in Regular Civil Suit No.50/1994.

The above suit was filed respondent nos. 1 to 3 against appellants and original respondent nos. 4 to 9 for partition and separate possession. The suit was contested by the defendants including appellants who were defendant nos. 7 to 9 in the

said suit. The appellants are purchasers of suit field no.39 from defendant nos. 1 to 6. The trial Court decreed the suit and held that the plaintiffs were entitled to partition and separate possession in respect of their 7/96th share each in the suit field. The plaintiffs were held entitled to 2/9th share in dwelling house, situated at Washim in Survey no. 375/2. Enquiry under Order XX Rule 12 of the Code of Civil Procedure was also ordered. The appeal preferred by the defendant nos. 7 to 9 was dismissed by the lower appellate Court.

Mr. Sambre, learned counsel appearing for the appellants submitted that both the Courts below have erred in passing the impugned decrees and the findings given by both the Courts below are perverse warranting interference in the second appeal. He further submitted that the suit ought to have dismissed at least against the appellants herein in view of the fact that they purchased the suit field from defendant nos. 1 to 6.

Per contra, Mr. Nemade, learned counsel appearing for respondent nos. 1 to 3 supported the decrees passed by both the courts below.

Having considered the submissions made

by learned counsel for the parties and having perused the records, I do not find any perversity in the findings recorded by both the Courts below. The findings given by the trial Court are based upon proper appreciation of the evidence, oral as well as documentary, produced by the parties. The trial Court, therefore, was justified in passing the impugned decree and consequently lower appellate Court was right in up-holding the judgment passed by the trial Court. I do not find any perversity in the findings given by both the Courts below. Hence, the appeal is summarily rejected.

C.A.Nos.1381/2003 and 3333/2006

In view of dismissal of second appeal, nothing survives in the applications. Hence, the civil applications are dismissed as infructuous.

JUDGE

A.